

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ALBERT KORVEMAKER

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Appeal No. 2000-0499  
Application 08/716,431

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ON BRIEF

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Before CALVERT, PATE, and NASE, Administrative Patent Judges.  
PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the examiner's refusal to allow claims 1 through 6 as amended after final rejection. These are the only claims remaining in the application.

The claimed invention is directed to a transport container for transporting exothermic substances. The claims are also directed to a method for transporting such substances.

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Exothermic substances, such as the organic peroxides, give off heat as they decompose. The heat given off aids further decomposition, causing the substance to quickly generate high heat and high pressure that can burst an ordinary shipping container. Appellant's container and method utilize a spring clamp that can release the lid of the container so that the container itself does not fragment.

The invention can be further understood with reference to the appealed claims. Notwithstanding the examiner's comment that the claims appended to the brief are correct, we note that claim 6 appended to the brief is an incorrect copy of the claim. A correct copy of claim 6 as it appears in the 37 C.F.R. § 1.116 amendment filed on February 9, 1999 reads as follows:

6. A container for the transportation and storage of chemicals compounds susceptible to exothermic decomposition wherein said container is sealed with a cover through a clamping strap, wherein the clamping strap is designed to release the cover at a predetermined level of superatmospheric pressure in the container.

The references of record relied upon as evidence of anticipation and obviousness are:

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Coleman	5,193,864	Mar. 16,
		1993
De Groot	0,308,544	Mar. 3, 1987
(European Patent Application)		

As in an initial matter, we note that appellant includes comments in the brief directed to the examiner's refusal to enter an amendment after final rejection under 37 C.F.R. § 1.116 filed on January 11, 1999. As noted by the examiner, the refusal to enter such an amendment is not an appealable matter and will not be further considered by this board.

#### THE REJECTIONS

Claim 6 stands finally rejected under 35 U.S.C. § 102 as unpatentable over Coleman.

Claims 1 through 5 stand finally rejected under 35 U.S.C. § 103 as unpatentable over Coleman in view of De Groot. Since appellant has not included separate arguments respecting claims 2 through 5, we hold that these claims stand or fall with claim 1 on appeal.

#### OPINION

We have carefully reviewed the rejections on appeal in

light of the remarks of the appellant and the examiner. As a result of this review, we have reached the determination that the applied prior art of Coleman is anticipatory to appellant's claim 6 and the applied prior art of Coleman and De Groot establishes a prima facie case of obviousness with respect to claims 1 through 5. Inasmuch as the prima facie obviousness of claims 1 through 5 has not been rebutted by additional evidence from the appellant, we will affirm both the rejection of claim 6 and the rejection of claims 1 through 5. Our reasons follow.

Coleman discloses in col. 11 and Fig. 19 a clamping strap for a bulk material container which releases from sealing engagement the top plate 156 from the container when excessive internal force is applied to the top plate. The level of internal pressure at which the clamp releases sealing engagement from the container can be adjusted by lock nuts 191 and 192. Thus, Coleman discloses a clamp that can release the cover from sealing engagement with a container at a predetermined level.

On page 5 of the brief, appellant first argues that

Coleman does not disclose a container comprising a pressure release valve. However, the pressure release valve limitation in claim 6 as it appears in the appendix to the brief is erroneous. Actual claim 6 on appeal does not contain such a limitation. Next, appellant argues that Coleman does not disclose a container designed to "release the cover from the rim of the container at a predetermined level of superatmospheric pressure in the container, opening the entire top of the container for pressure relief." Initially, we must point out that the clamp of Coleman clearly releases the cover from sealing engagement with the bulk material container to allow for the pressure therein. In this respect, we agree with the examiner that in this manner Coleman can be said to release the cover from the container.

Appellant's argument with respect to opening the entire top of the container for pressure relief is an argument predicated on impermissibly importing limitations from the specification into a claim where they do not appear. "[T]he general principle is that limitations from the specification are not to be read into the claims. We see nothing which

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would justify a departure from that principle in this case."  
Sjolund v. Musland, 847 F.2d 1573, 1582, 6 USPQ2d 2020, 2027  
(Fed. Cir. 1988). Additionally, we are further of the view  
that the limitation appellant seeks to import into the claim  
represents only a matter of degree with

respect to how much the cover is opened when the cover of  
Coleman is subjected to greater internal pressure. As Coleman  
makes  
abundantly clear, the spring of the clamp therein disclosed  
can be set to allow greater or lesser opening with respect to  
the internal pressure in the container. Whether the entire  
cover is released from sealing engagement, or only a portion  
thereof, is a matter of choice determined by the user of the  
Coleman container.

With respect to the obviousness rejection of claims 1 through 5, it is our finding that De Groot discloses a container to safely store and transport bulk volumes of exothermic compound utilizing a rupture disk 106 or 15 wherein the rupture disk allows venting of the decomposition gases to prevent bursting of the tank. In our view, given the teaching of De Groot that it is important to provide for the venting of decomposition gases and entrained liquids to prevent bursting of the tank, it would have been obvious to one of ordinary skill in the shipping container art to transport such exothermic chemicals as De Groot discloses in the container illustrated in Fig. 19 of Coleman which provides such a safety mechanism.

With respect to the obviousness rejection, we must repeat that it is improper for appellant to read limitations from the specification into the claims on appeal. On page 7 of the brief, appellant argues that Coleman does not recognize the serious problem of transporting exothermic chemicals. However, nonobviousness cannot be established by attacking

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references individually where the rejection is based upon the teaching of a combination of references. In re Merck & Co., 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986).

Additionally as we have pointed out above, De Groot teaches the importance of allowing venting of decomposition gases to prevent bursting of the tank.

For the reasons given above, the rejections of claims 1 through 6 on appeal are affirmed.



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No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 C.F.R.  
§ 1.136(a).

AFFIRMED

IAN A. CALVERT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
WILLIAM F. PATE, III	)	)
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

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